

1975 S.C. Op. Atty. Gen. 197 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4129, 1975 WL 22425

Office of the Attorney General

State of South Carolina

Opinion No. 4129

September 23, 1975

***1 In Re: Municipal Courts, Preliminary Hearings, Duty to Hold**

Honorable R. Kirk McLeod

Solicitor

Third Judicial Circuit

Law Range

Sumter, South Carolina 29150

Dear Solicitor McLeod:

You have inquired whether or not a municipal judge is required to hold a preliminary hearing in matters beyond his jurisdiction to try when he has issued the arrest warrant initiating the criminal action.

Act No. 249, Acts of 1975, specifically empowers municipal judges in towns and cities with more than 1,000 population to hold preliminary hearings in matters beyond their jurisdiction to try with the same authority ‘now conferred by law upon the magistrates—’.

Section 43–231, 1962 Code of Laws of South Carolina, reads in part:

‘Any magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary investigation of it upon the demand in writing of the defendant made at least ten days before the convening of the next court of general sessions—.’ [Emphasis added].

Although the defendant may demand a removal from one magistrate to the ‘next magistrate’ [Section 43–233], there is no other statutory provision giving jurisdiction to another magistrate to hold a preliminary hearing with respect to a warrant issued by a particular magistrate. Under provisions of Act 249, the Section is applicable to municipal judges.

In view of the foregoing, it is the opinion of this Office that a municipal judge who issues an arrest warrant in a matter beyond his jurisdiction to try has a duty to hold a preliminary hearing when such is properly demanded, both under the language of Section 43–232 and because his failure or refusal to do so could prohibit prosecution of the charge in general sessions court.

Yours very truly,

Joseph C. Coleman

Deputy Attorney General

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